

1 CAMPEAU GOODSSELL SMITH, L.C.  
SCOTT L. GOODSSELL, #122223  
2 WILLIAM J. HEALY, #146158  
440 N. 1<sup>st</sup> Street, Suite 100  
3 San Jose, California 95112  
Telephone: (408) 295-9555  
4 Facsimile: (408) 295-6606

5 ATTORNEYS FOR Debtor

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8 UNITED STATES BANKRUPTCY COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
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11 In re: ) Case No. 13-53491  
12 272 E SANTA CLARA GROCERY, LLC, ) CHAPTER 11  
13 Debtor. ) **REQUEST FOR JUDICIAL NOTICE**  
14 ) **RE: AMENDED OBJECTION TO**  
15 ) **PROOF OF CLAIM OF BOSTON**  
16 ) **PRIVATE BANK & TRUST COMPANY**  
17 ) **(Claim No. 2)**  
18 )

19 TO THE HONORABLE STEPHEN L. JOHNSON, UNITED STATES BANKRUPTCY  
20 COURT JUDGE; THE OFFICE OF THE UNITED STATES TRUSTEE; BOSTON  
21 PRIVATE BANK & TRUST COMPANY; and all other interested parties:

22 COMES NOW Debtor 272 E. Santa Clara Grocery, LLC (“Debtor”) and submits the  
23 following amended<sup>1</sup> request for judicial notice pursuant to Federal Rules of Evidence, Rule  
24 201 in support of its objection to Boston Private Bank & Trust Company’s, a successor in  
25 interest to Borel Private Bank and Trust Company (“BPB”), Proof of Claim No. 2 filed

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27 <sup>1</sup>Amended to clarify matters subject to judicial notices as set forth in the Objection and support  
the Amended Objection.

1 October 22, 2013 ("BPB Claim") as follows ("Objection"):

2 **I. The Court Has Statutory Authority to Take Judicial Notice of Its Files**  
3 **and The Files of Other Courts.**

4 Pursuant to Federal Rules of Evidence, Rule 201, the court has statutory authority to  
5 take judicial notice of its own files and the files of other courts and specific facts stated  
6 therein.

7 Debtor's Objection contains references to numerous court files of this court and facts  
8 stated therein, in particular by way of reference to the court's Docket Number System, and to  
9 pleadings from the Santa Clara County Superior Court and facts stated therein. Debtor  
10 requests and moves this court to take judicial notice of its own court file and the files of other  
11 courts, namely of Santa Clara County Superior Court, and specific facts stated therein as such  
12 are referenced in the Objection.

13 **RFJN No. 1:** In March 2012 BPB prepared and executed a Third Amendment To Agreement  
14 Re Foreclosure Sale dated March 15, 2012 and asserted in Recital C "As of the date of this  
15 Third Amendment, the principal sum due under the Loan is #3,460,917.00", Docket#52-2,  
16 page 3 and 78-13, page 1; Declaration of Randy L. Zuckerman, Exhibit N, page 1  
17 (Docket#106-22, page 2).

18 **RFJN No. 2:** In March 2012 BPB prepared and executed a Third Amendment To Agreement  
19 Re Foreclosure Sale dated March 15, 2012 and asserted that "1. Acknowledgment of  
20 Recitals. The Parties acknowledge the truth and accuracy of the Recitals to this Third  
21 Amendment.", Docket#52-2, page 3 and 78-13, page 1; Declaration of Randy L. Zuckerman,  
22 Exhibit N, page 1, (Docket#106-22, page 2).

23 **RFJN No. 3:** In May 2013 BPB prepared and submitted to Debtor a Fourth Amendment To  
24 Agreement Re Foreclosure Sale and asserted in Recital C "As of the date of this Fourth  
25 Amendment , the principal sum due under the Loan is \$3,341,017.00", Docket#52-2, page 16  
26 and 78-14, page 2; Declaration of Randy L. Zuckerman, Exhibit O, page 1 (Docket#106-23,  
27 page 1).

1 **RFJN No. 4:** In May 2013 BPB prepared and submitted to Debtor a Fourth Amendment To  
2 Agreement Re Foreclosure Sale and asserted that “1. Acknowledgment of Recitals. The  
3 Parties acknowledge the truth and accuracy of the Recitals to this Fourth Amendment.”,  
4 Docket#52-2, page 16 and 78-14, page 2; Declaration of Randy L. Zuckerman, Exhibit O,  
5 page 1 (Docket#106-23, page 1).

6 **RFJN No. 5:** On June 10, 2013, BPB filed a Verified Complaint For (1) Judicial Foreclosure;  
7 And (2) Specific Performance And Appointment of Receiver commencing a state court  
8 action against Kimomex and Debtor, Santa Clara County Superior Action No.: 1-13-CV-  
9 247961 (“State Court Action”) (Attached hereto).

10 **RFJN No. 6:** BPB’s State Court Action asserted, under penalty of perjury, that “As of June  
11 10, 2013, there is due, owing and outstanding under the Promissory Note the principal  
12 amount of \$3,314,017.20 . . .” (State Court Action, page 5, paragraph 14, lines 3-5).

13 **RFJN No. 7:** BPB’s State Court Action was verified, under penalty of perjury, by David  
14 Scheiber, Senior Vice President, Special Asset Department, at BPB on June 10, 2013.

15 **RFJN No. 8:** On July 12, 2013 BPB file a Memorandum of Points and Authorities in  
16 Support of Motion by Secured Creditor Boston Private Bank & Trust Company Confirming  
17 No Stay Is In Effect with Respect to Rent and asserted that “As of the petition filing date, the  
18 outstanding principal balance due and owing from Kimomex under the Promissory Note and  
19 other Loan Documents is \$3,341,017.20” (Docket#22-1, page 4, lines 9-12).

20 **RFJN No. 9:** On July 12, 2013 BPB filed the Declaration of David Scheiber in Support of  
21 Secured Creditor Boston Private Bank & Trust Company’s Motion for Order Confirming No  
22 Stay Is in Effect with Respect to Rent and asserted, under penalty of perjury, that “As of June  
23 27, 2013, the outstanding principal balance due and owing from Kimomex under the  
24 Promissory Note and other Loan Documents is \$3,341,017.20.” (Docket# 22-2, page 3,  
25 paragraph 7, lines 23-24).

26 **RFJN No. 10:** On July 25, 2013 and July 29, 2013 BPB filed several Ex Parte Motion for  
27 Production of Documents and asserted “BPB holds the senior lien on the Property securing a

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REQUEST FOR JUDICIAL NOTICE RE: AMENDED OBJECTION TO PROOF OF CLAIM OF BOSTON PRIVATE BANK & TRUST  
COMPANY (Claim No. 2)

1 loan with an outstanding principal balance of \$3,341,017.20" (Dockets#31-36, 41, and 45,  
2 page 2, paragraph 3).

3 **RFJN No. 11:** On August 14, 2013 BPB filed a Secured Creditor Boston Private Bank &  
4 Trust Company's Opposition to Debtor's Cross Motion for Use of Cash Collateral and  
5 asserted "As of the Petition Date, the outstanding principal balance due and owing from  
6 Kimomex to BPB under the Note and other Loan Documents was \$3,341,017.20."  
7 (Docket#50, page 4, lines 6-9).

8 **RFJN No. 12:** On August 15, 2013 BPB file an Opposition To Ex Parte Application for  
9 Order Directing Boston Private Bank & Trust Company's Production of Documents under  
10 Bankruptcy Rule 2004 and asserted "BPB holds the senior lien on the certain leased real  
11 property located at 272 E. Santa Clara Street, San Jose, Ca. (the "Property") securing a loan  
12 with an outstanding principal balance of \$3,341,017.20" (Docket#Docket#51, page 2, lines 3-  
13 5).

14 **RFJN No. 13:** The first pleading filed by BPB in the either the State Court Action or this  
15 bankruptcy case wherein it asserted an outstanding principal balance other than  
16 \$3,341,017.20 was after Debtor filed its Motion to Sell and Motion to Assume on October  
17 16, 2013 (Dockets#67 and 68).

18 RFJN No. 14: October 22, 2013 BPB's first asserted in this bankruptcy case an outstanding  
19 principal balance other than \$3,341,017.20 in its Proof of Claim.

20 **II. Conclusion.**

21 For the foregoing reasons Debtor requests the court take judicial notice of its own files  
22 and the files of other courts.

23 December 13, 2013

24 CAMPEAU GOODSSELL SMITH  
25 /s/ William J. Healy  
26 William J. Healy  
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